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16 NEVRO CORPORATION

17  
18 UNITED STATES DISTRICT COURT  
19 NORTHERN DISTRICT OF CALIFORNIA  
20 SAN JOSE DIVISION

21 CV 14 80188 MISC.  
22 BOSTON SCIENTIFIC CORPORATION,

23 Plaintiff,

24 v.  
25 DONGCHUL LEE,

26 Defendant.

27 Case No. 80188

28 DECLARATION OF DONGCHUL LEE IN SUPPORT OF NON-PARTY NEVRO CORPORATION'S MOTION TO QUASH BOSTON SCIENTIFIC CORPORATION'S SUBPOENA FOR PRODUCTION OF DOCUMENTS AND THINGS

29 Date: TBD  
30 Time: TBD  
31 Ctrm: TBD

32 FILED  
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39 LEE DECL. ISO NEVRO'S MOTION TO QUASH BSC'S SUBPOENA  
40 CASE NO. pa-1648869

41 FILED  
42 JUN 20 2014  
43 RICHARD W. WIEKING  
44 CLERK, U.S. DISTRICT COURT  
45 NORTHERN DISTRICT OF CALIFORNIA

46 31ser

1 I, Dongchul Lee, hereby declare as follows:

2 1. I have personal knowledge of the facts stated in this declaration, and I could and  
3 would testify competently to them if called upon to do so.

4 **Background and Education**

5 2. I live in Agua Dulce, California. I have lived and worked in California throughout  
6 the entire time period relevant to this lawsuit.

7 3. I received a Bachelor of Science from Chung-Ang University in Seoul, Korea in  
8 1993.

9 4. In 1997, I earned a Masters of Science in Electrical Engineering from the  
10 University of Houston in Houston, Texas.

11 5. In 2004, I earned a PhD in Biomedical Engineering from Case Western Reserve  
12 University in Cleveland, Ohio.

13 6. During my PhD program, I concentrated in computer modeling. My PhD  
14 dissertation was focused on computational modeling of the central nervous system and electrical  
15 stimulation of the nervous system.

16 7. In 2006, I accepted a position as a Senior Biomedical System Engineer in the  
17 Neuromodulation Division of Boston Scientific, which is located in Valencia, California.

18 **Employment at Nevro**

19 8. In 2013, I became dissatisfied with my career opportunities at Boston Scientific.  
20 As a result, I decided to resign. I was considering starting a consulting company, and discussed  
21 providing consulting services to Boston Scientific (as well as other spinal cord stimulation  
22 companies).

23 9. Nevro Corporation (“Nevro”) learned that I was leaving Boston Scientific and  
24 offered me a job. Because I had heard of the clinically-superior results Nevro’s 10 kHz SCS  
25 system was producing, and because I believed Nevro’s HF10™ SCS therapy would one day make  
26 Boston Scientific’s low frequency, paresthesia-based SCS therapy obsolete, I was excited about  
27 the prospect of working for Nevro. I therefore accepted Nevro’s offer and officially began  
28 working for Nevro on November 8, 2013.

1           10. Nevro has never once asked me to disclose trade secrets or confidential  
 2 information belonging to Boston Scientific. Further, Nevro's management team has repeatedly  
 3 told me they see no commercial value in learning Boston Scientific's trade secret and confidential  
 4 information.

5           11. On November 7, 2013, I signed Nevro's Proprietary Information Contract, which  
 6 among other things states:

7           During my employment by [Nevro], I will not improperly use or  
 8 disclose any confidential information, intellectual property or trade  
 9 secrets, if any, of any former employer or any other person to  
 10 whom I have an obligation of confidentiality, and I will not bring  
 11 onto the premises of [Nevro] any unpublished documents or any  
 12 property belonging to any former employer or any other person to  
 13 whom I have an obligation of confidentiality unless expressly  
 14 authorized in writing by that former employer or person. I will use  
 15 in the performance of my duties only information which is  
 16 generally known and used by persons with training and experience  
 17 comparable to my own, which is common knowledge in the  
 18 industry or otherwise legally in the public domain, or which is  
 19 otherwise provided or developed by [Nevro].

20           12. I have, and will continue to maintain, the terms of my above-stated agreement with  
 21 Nevro. I have not improperly used or disclosed Boston Scientific's Proprietary Information.

#### 22           **Employment at Boston Scientific and Expedited Discovery**

23           13. Throughout my tenure at Boston Scientific, I often worked from outside the office,  
 24 either from home or from hotel rooms while traveling. I did not have easy access to my Boston  
 25 Scientific email from outside of the office. As a result, I (and many of my colleagues) often  
 26 forwarded documents to our personal email accounts in order to work from remote locations, such  
 27 as our homes.

28           14. During my last two years at Boston Scientific, I had to travel for work extensively,  
 29 including overseas trips to Australia, Canada, and Europe. Not only did this frequent travel cause  
 30 difficulty for my family, but it also made it quite difficult for me to keep up with my work at  
 31 Boston Scientific. During this timeframe, I worked very long hours, often at odd hours of the day  
 32 and/or in significantly different time zones, which increased my need to work from home and  
 33 from other outside locations. As a result, I asked Boston Scientific to provide me with a Smart  
 34 Phone, which would allow me to access to my company email. Boston Scientific, however,

1 denied my request.

2 15. Given the high volume of work that I had to perform remotely, I often forwarded  
3 work documents to my personal Gmail account so that I could access them and work on them  
4 from outside the office. From my work at Boston Scientific, I understand that many of my  
5 colleagues did so as well. In fact, my colleagues and I often shared documents stored on Google  
6 Drive as an easy means of collaborating.

7 16. While many thousands of documents were produced in expedited discovery, I  
8 believe most of these documents are either published documents or duplicates of documents held  
9 in backup devices, some of which I did not find until performing a more thorough search of my  
10 home after commencement of discovery. Due to the nature of this case and the expedited  
11 discovery, I was not able to confirm which of the produced documents were actually confidential  
12 and/or proprietary to Boston Scientific.

13 17. Through my attorneys, I offered several times to permanently delete any and all  
14 documents relating to Boston Scientific, whether confidential or not, that were contained on any  
15 computer or electronic storage device that I had at any time and using whatever manner Boston  
16 Scientific deems sufficient.

17 **The Nevro Laptops**

18 18. When I started my employment with Nevro in November of 2013, I was assigned a  
19 laptop computer (the "Initial Laptop"), which I used to perform my job duties at Nevro.

20 19. I used the Initial Laptop to build hypotheses based on Nevro's HF10™ spinal cord  
21 stimulation ("SCS") therapy clinical data. I also downloaded documents to the Initial Laptop that  
22 contain highly confidential information belonging to Nevro that is irrelevant to this lawsuit, and  
23 relates to, among other things, Nevro's high-frequency paresthesia-free HF10™ therapy. I also  
24 downloaded documents reflecting privileged attorney-client communications and attorney work  
25 product relating to Nevro's technology.

26 20. I also used the Initial Laptop to communicate via e-mail with Nevro's in-house  
27 counsel, Peter Socarras, who is the company's Director of Intellectual Property, and with outside  
28 counsels Christina Lewis of Hinckley, Allen & Snyder, LLP, and Ken Kuwayti and Efrain Staino

1 of Morrison & Foerster LLP, about legal advice and strategy relating to this lawsuit.

2 21. In late December 2013, after Boston Scientific Corporation ("Boston Scientific")  
3 filed this lawsuit, Nevro instructed me to stop using the Initial Laptop. I stopped using the Initial  
4 Laptop at that time. On January 8, 2014, Nevro assigned me a new laptop (the "New Laptop"),  
5 which I received the following day.

6 22. I have used the New Laptop to conduct limited highly confidential research on  
7 computer modeling on behalf of Nevro that has not been publicly disclosed and that is irrelevant  
8 to this lawsuit. The New Laptop also contains confidential documents relating to Nevro's future  
9 marketing strategies. I have also used the New Laptop to communicate with Nevro employees  
10 using my corporate Nevro e-mail account about highly confidential work-related matters,  
11 including animal research and clinical research plans, that are irrelevant to this lawsuit.

12 23. I have also used the New Laptop to communicate via e-mail with Nevro's in-house  
13 counsel, Peter Socarras, who is the company's Director of Intellectual Property, and with outside  
14 counsels Christina Lewis of Hinckley, Allen & Snyder, LLP, and Ken Kuwayti and Efrain Staino  
15 of Morrison & Foerster LLP, about legal advice relating to this lawsuit. The New Laptop also  
16 contains documents reflecting communications with these attorneys, and documents created by  
17 these attorneys that relate specifically to the strategy for this litigation.

18 24. Since approximately the middle of March 2014, I have not conducted any work for  
19 Nevro and have been put on leave. Since that time, I have only used the New Laptop to  
20 communicate with my attorneys about the underlying lawsuit.

21 25. As part of my Certification of Compliance with the Court's Memorandum and  
22 Order on Boston Scientific's Motion for Preliminary Injunction dated May 14, 2014, I carefully  
23 examined the New Laptop and did not find any Boston Scientific Proprietary Information stored  
24 on the laptop.

25 26. I have not and will not disclose any confidential information belonging to Boston  
26 Scientific to Nevro.

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2 I declare under penalty of perjury under the laws of the United States of America that the  
3 foregoing is true and correct.

4 Executed at Agua Dulce, California, this 20<sup>th</sup> day of June, 2014.

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